

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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L.J. ZUCCA, INC.

Plaintiff,

v.

ALLEN BROS. WHOLESALE  
DISTRIBUTORS INC. *et al.*,

Defendants.

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C.A. No. 1:07-cv-2 (JJF)

**DEFENDANT COOPER-BOOTH WHOLESALE COMPANY'S  
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

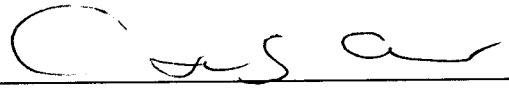
Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, Defendant Cooper-Booth Wholesale Company, by and through its undersigned counsel, hereby moves this Court for judgment on the pleadings dismissing Count I of Plaintiff L.J. Zucca, Inc.'s First Amended Verified Complaint. Count I of the First Amended Verified Complaint asserts claims for alleged violations of the Delaware Unfair Cigarette Sales Act, 6 *Del. C.* §§ 2601 – 2608. Defendant Cooper-Booth Wholesale Company seeks judgment on the ground that the Delaware Unfair Cigarette Sales Act is preempted by Section 1 of the Sherman Act, 15 U.S.C. § 1.

The factual and legal grounds for this Motion are set forth in Defendant Cooper-Booth Company's Brief in Support of Motion for Partial Judgment on the Pleadings, filed contemporaneously herewith. Oral argument is requested.

Respectfully submitted,

**BLANK ROME LLP**

Dated: March 12, 2008

A handwritten signature in black ink, appearing to read 'C. Azar', is written over a horizontal line.

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Attorneys for Defendant  
Cooper-Booth Wholesale Company

**CERTIFICATE OF SERVICE**

I, Christine S. Azar, certify that on March 12, 2008, I served a copy of **Defendant Cooper-Booth Company's Motion for Partial Judgment on the Pleadings** upon the following counsel in the manner indicated below:

**VIA ELECTRONIC SERVICE**

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**ORDER**

THIS MATTER having come before the Court on Defendant Cooper-Booth Wholesale Company's Motion for Partial Judgment on the Pleadings for an Order under Rule 12(c) dismissing Count I of Plaintiff L.J. Zucca, Inc.'s First Amended Verified Complaint on the ground that, pursuant to Article VI, Paragraph 2 of the United States Constitution, the claims asserted under the Delaware Unfair Cigarette Sales Act, 6 *Del. C.* §§ 2601 – 2608, are preempted by the Sherman Act, 15 U.S.C. § 1; and the Court having considered the moving and opposing papers, argument of counsel, and having placed its findings of fact and conclusions of law on the record;

IT IS on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, **ORDERED** that:

1. Defendant Cooper-Booth Wholesale Company's motion is **GRANTED**.
2. Count I of Plaintiff L.J. Zucca, Inc.'s First Amended Verified Complaint is **DISMISSED** under Rule 12(c) on the ground that, pursuant to Article VI, Paragraph 2 of the

United States Constitution, the Delaware Unfair Cigarette Sales Act, 6 *Del. C.* §§ 2601 – 2608, is preempted by the Sherman Act, 15 U.S.C. § 1.

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Hon. Joseph J. Farnan, Jr.